



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Florida Transportation Services,  
Incorporated--Reconsideration

**File:** B-235559.2

**Date:** September 6, 1989

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### DIGEST

Dismissal of protest of fifth low offeror in procurement in which price is only evaluation factor is affirmed where protester would not be in line for award even if protest were sustained and, thus, is not an interested party eligible to pursue a protest against award to low, responsible offeror.

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### DECISION

Florida Transportation Services, Incorporated (FTS), requests reconsideration of our decision, Florida Transportation Servs., Inc., B-235559, May 24, 1989, 89-1 CPD ¶ 503, in which we dismissed its protest of the award to South East Atlantic Cargo Operators (SEACO) under request for proposals (RFP) No. DAHC24-89-R-0003, issued by the Military Traffic Management Command for stevedoring and related terminal services to support operations of the Rapid Deployment Force at Blount Island, Jacksonville, Florida. We dismissed the protest because we found that the protester, as the fifth low offeror, was not an interested party to protest that SEACO's proposed labor rates violated the Contract Work Hours and Safety Standards Act and the wage determination required by the Service Contract Act. FTS argues on reconsideration that it contested the eligibility of the other lower priced offerors in an agency-level protest and therefore is an interested party.

We affirm the dismissal.

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The RFP provided that the government would award one contract covering all the required services to the offeror offering the lowest overall gross dollar amount. Thus, the competition was based solely on price.

The abstract of offers revealed that FTS was the fifth low offeror. FTS challenged the award to SEACO and did not protest to our Office the eligibility of the other lower-priced offerors. On this basis, we found that FTS would not be in line for award even if its protest were sustained and thus was not an interested party.

FTS has now informed us that, on May 17, it challenged the eligibility of the other lower-priced offerors in an agency-level protest. FTS contends that the other lower-priced offerors engaged in collusive bidding and falsifying the Certificate of Independent Price Determination. The agency responds that it did not consider FTS's May 17 letter to be a protest since the letter asked the agency to investigate FTS's allegations. The agency states that it found no evidence of collusive bidding or falsification of the independent price determination certificate and on this basis did not refer these allegations to the Department of Justice. See Federal Acquisition Regulation § 3.103-2(b)(3) (FAC 84-1).

Allegations of collusive bidding and falsification of the Certificate of Independent Price Determination are not for resolution by the General Accounting Office. Acme Products, Inc., B-231846, July 13, 1988, 88-2 CPD ¶ 47. Rather, an allegation of collusive bidding raises, in the first instance, a matter to be considered by the contracting officer in the context of a responsibility determination, and since collusive bidding is a criminal offense, if the contracting officer suspects that there is collusion, the matter should be referred to the Attorney General. Id.

The contracting officer found no evidence of collusion and is not now considering the matter. Accordingly, all that remains is FTS's protest of the award to SEACO. Since FTS, as the fifth low offeror, is not in line for award even if its protest were sustained, it is not an interested party to challenge this award.

Moreover, we have been provided with a copy of the collective bargaining agreement between SEACO and the International Longshoremens' Association. This agreement complies with the requirements of the Contract Work Hours and Safety Standards Act and the wage determination required by the Service Contract Act. SEACO states that the "agreement" provided to us by FTS with its protest was an unsigned draft

which was never effective. FTS argues that the agreement proffered to us by SEACO is dated June 1, 1989, after the date of the protest and thus SEACO's proposal showed an intent to violate the wage laws. We note first that the "June 1" agreement was provided to our Office on May 24. In any event, we have held that even where an offeror has proposed rates which are below those specified in the appropriate wage determination, that offeror may nonetheless be eligible for award since such an offer does not necessarily show an intent to violate the Service Contract Act. Taft Broadcasting Corp., B-222818, July 29, 1986, 86-2 CPD ¶ 125. Furthermore, whether FTS performs the contract in accordance with the Act is a matter for the Department of Labor, which is responsible for the enforcement of the Act. Id.

The dismissal is affirmed.

*for Seymour Sp...*  
James F. Hinchman  
General Counsel